IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 544 OF 2006
IN
MISC. PETITION NO. 1 OF 2000
IN
T.&I.J. PETITION NO. 734 OF 1996

Smt. Basantidevi wd/o Hariharprasad Jaiswal.] .. Appellant (Ori.Petnr.)

Versus

Raviprakash Ramprasad Jaiswal] .. Respondent (Ori.Respondent)

Mr. N.N. Vaishnava with Mr. R.D. Dave i/b M/s. N.N. Vaishnava & Co. for the appellant.

Mr. Santosh Shetty i/b M/s. M.P. Vashi & Associates for the respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 29TH AUGUST, 2006

P.C. :

. It is not disputed by the learned counsel for the appellant before us that appellant is agnate of the deceased. We wanted to know from the counsel for appellant whether an agnate is a legal heir. The counsel did not answer the said question and referred to illustration (ii) appended to Section 263 of the Indian Succession Act, 1925. Section 263 is a provision for revocation or annulment of the probate or letters of

administration for just cause. Explanation appended to Section 263 provides that just cause shall be deemed to exist where -

> (a) the proceedings to obtain the grant were defective in substance; or
>
> (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
>
> (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
>
> (d) the grant has become useless and inoperative through circumstances; or
>
> (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect."

2. The counsel for the appellant submitted that in the application the name of the appellant who was agnate of the deceased was not mentioned. The name of the appellant would have been necessary to be mentioned if the appellant was legal heir of the deceased. In our considered view, an agnate cannot be said to be legal heir of the deceased. Obviously illustration (ii) is referable to aforequoted clause (b) appended to Section

263. An agnate was not required to be cited and, therefore, it cannot be said that the probate was granted without citing the party who ought to have been cited. The consideration of the matter by the learned Single Judge does not suffer from any legal infirmity.

3. Appeal is dismissed in limine.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]